

Approved as Submitted: February 2, 2005

**CITY OF MORGAN HILL  
JOINT SPECIAL AND REGULAR CITY COUNCIL  
AND SPECIAL REDEVELOPMENT AGENCY MEETING  
MINUTES – JANUARY 19, 2005**

**CALL TO ORDER**

Mayor/Chairman Kennedy called the special meeting to order at 6:01 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members Carr, Grzan, Tate and Mayor/Chairman Kennedy  
Late: Council/Agency Member Sellers (arrived at 6:20 p.m. and joined the Council/Agency Board in closed session)

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

***City Council and Redevelopment Agency Action***

**CLOSED SESSIONS:**

City Attorney/Agency Council Leichter announced the below listed closed session items:

**1.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Authority: Government Code Sections 54956.9(b) & (c)  
Number of Potential Cases: 2

**2.**

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Authority: Government Code section 54956.9(a)  
Case Name: City of Morgan Hill v. VBN Corporation and ABSG Consulting, Inc.  
Court/Case Number: Santa Clara County Superior Court, Case Number 1-03-CV-008266.

**3.**

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:**

Authority: Pursuant to Government Code 54956.9(a)  
Case Name: City of Morgan Hill v. Tanya J. Keppler  
Case Number: Santa Clara County Superior Court, Case No. 1-04-CV-016682

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

### **ADJOURN TO CLOSED SESSION**

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:03 p.m.

### **RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 7:05 p.m.

### **CLOSED SESSION ANNOUNCEMENT**

City Attorney/Agency Counsel Leichter announced that no reportable action was taken in closed session.

### **SILENT INVOCATION**

### **PLEDGE OF ALLEGIANCE**

At the invitation of Mayor/Chairman Kennedy, Police Chief Cumming led the Pledge of Allegiance.

### **PRESENTATIONS**

Director of Human Resources Fisher introduced employees receiving the following Peak Performance Awards for 2004: Challenge Award - Kevin Higgins; Innovation Award - Steve Pendleton; Professional Growth Award - Karen Nelson; Teamwork Award - Aquatics Center Opening: Serjio Jauragi, Theresa Magno, Shelly Yowell, Aaron Himelson and Julie Spier; and Employee of the Year - Patti Yinger

Police Chief Cumming introduced the newest additions to the Police Department: Elizabeth Reese, Jamie Pereira, Kyle Christensen, Dawnelle Jackson, and Bill Norman.

Police Chief Cumming introduced the new Police Department Centennial Badges, and the officers responsible for the new design, Police Officers Ken Howard and David Ray.

### **PROCLAMATIONS**

Mayor Kennedy presented Ms. Lemberger and Ms. Knopf with a proclamation declaring January 2005 as National Volunteer Blood Donor Month.

### **CITY COUNCIL REPORT**

Mayor Pro Tempore Tate reported on the direction that the Library Joint Powers Authority will be taking in order to fund the operations of the library. He stated that the Library Joint Powers Authority will be supporting a ballot measure(s) to be mailed out at the beginning of April 2005 and due back on May 3, 2005. He indicated that two questions will be asked: 1) Do citizens want to continue to pay the existing \$33.66 per year assessment to enable the level of service at the library that is in place at this

time? He noted that the level of service in place at this time is slightly reduced from what it was a few months ago. He indicated that the library is now closed on Mondays and that there were cutbacks in collection and staffing levels. This level of service would be maintained if citizens pass this measure. 2) Would citizens be willing to pay an increase in assessments in an amount sufficient to return to the level of service the City had prior to closing on Mondays and cutting back on some of the library services? He indicated that the Library Joint Powers Authority believes that it can get the support needed and encouraged citizens to participate in the vote. He requested that he be contacted by anyone willing to work toward this campaign.

### **CITY COUNCIL SUBCOMMITTEE REPORTS**

None.

### **CITY MANAGER REPORT**

City Manager Tewes indicated that he did not have a report to present this evening.

### **CITY ATTORNEY REPORT**

City Attorney Leichter announced that the United States Supreme Court granted the request to dismiss the Hacienda Valley Mobile Estates lawsuit that was pending before it due to a settlement between the City and the Hacienda park owners. She stated that there are no other Mobile Home Rent Control cases listed on the City's dockets.

### **OTHER REPORTS**

None.

### **PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Georgina Pelz, resident of Coyote Estates, informed the Council that she was in attendance with several of her neighbors. She submitted signatures and e-mails from individuals unable to attend this evening's Council meeting. She stated that the residents in attendance were representing the communities surrounding the Boys Ranch located on Malaguerra Avenue. She stated that residents are concerned about the number of escapes, low security, and the offenses of the juveniles being detained at the Boys Ranch facility. She said that the rape of a 10-year old girl in San Jose by a 16-year old known gang member who escaped from the Wright Rehabilitation Center in south San Jose has prompted residents to take a closer look into the many escapes that have occurred at the Rehabilitation Center. She said that the Santa Clara County Probation's website states that 139 boys escaped from the William F. and Harold Holden Boys Ranches during Fiscal Year 2003. She felt that there have been too many times that she and other residents have encountered escapees on their properties, in community parks and in creek

areas utilized for walks, hikes and playtime with children. She did not understand why residents are being told by County and City agencies that they are not at risk when the boys escape, and that the gang members who escaped on January 12, 2005 were not a threat to the community. She noted that the sheriff's department, multiple police cars, a police dog, an ambulance and fire engine were dispatched to assist with the escape situation. When residents call in escapes, they are told by these same agencies that they are aware of the situation and advise residents not to worry as the escapees will be picked up. She informed the Council that citizens believe that they are at risk as some of the detainees are dangerous. Residents see that there is low security at a facility that houses gang members and sexual offenders and that there are many families residing close to the facility who consider this to be dangerous. She requested that the Council agendaize this item for formal discussion as residents believe that it is too easy for the detainees to escape and hurt residents. Residents want security increased and the sex offenders/dangerous youth offenders housed elsewhere. She indicated that residents want to know what is going on so that they can secure their homes and children. She said that residents are looking for support from the City so that this issue can be addressed with the proper County officials.

Christine Nguyen, Mission Ranch resident and mother of two, informed the Council that she was confronted by an escapee from the Boys Ranch in December 2004. She felt that it was unsafe for her children to play in their backyard. She requested that the Council and Mayor pay special attention to residents' concerns as the area is developing further and that families with children will be moving to the area. She indicated that residents feel threatened by escapees and expressed concern that they may turn violent or turn into a hostage situation. She requested that the Council address these issues and further requested that additional information be released/provided about the Boys Ranches in the area.

Joy Zako, Mission Ranch resident, expressed concern about the security issues associated with the Boys Ranch. She stated that it was unacceptable to restrain children from playing beyond their parent's sight in a nice neighborhood. She requested the City look into this matter and see if there is any way that additional security can be added.

Jenny Vo, Mission Ranch resident, expressed concern with security at the Boys Ranch. She indicated that residents were not informed as to what was taking place when there was a search for an escapee in December 2004. She informed the Council that she and her husband sent several e-mails to staff at the Boys Ranch as well as the Probation Office and that they went unanswered. She finally e-mailed Board of Supervisor Don Gage's office and received a response. She requested that the City look into the lack of communication from the different agencies regarding this issue as residents are directly impacted.

Susan Cervantes indicated that she faced a situation where an escapee was being pursued by other juveniles of the Boys Ranch through her street to help apprehend the young boy. The Police Department returned her phone call who advised that a juvenile escaped. She stated that she does not feel safe. When she contacts the police department or Boys Ranch officials, she is advised that they cannot tell residents what is going on or who have escaped as they are minors. She noted that residents are not asking for names or addresses. However, residents want to be warned and be advised when someone has escaped in order to keep children safe. She requested that Council place this issue on its agenda and take the matter seriously.

Cherie Boulard, Coyote Estate resident, confirmed that residents were advised by a disclaimer that there was a juvenile detention center on Malaguerra. However, residents were unaware of the lack of security in the detention center, the lack of motivation on behalf of law enforcement, and the extent of the types of offenders that are being housed at the Boys Ranch, including the number of escapees that come from the Boys Ranch. She submitted articles from the Mercury News that lists the description of Boys Ranch escapees. She informed the Council that in 1995, the Grand Jury issued a report that states that security is needed at the Boys Ranch, noting that the Probation Department did not agree and felt that the problem was from offenders coming to the Ranch and not attributed to the escapees. The Probation Department's concession was to install a gate so that individuals would not be able to drive into the facility, noting that the gate is never closed. She informed the Council that the residents are requesting that a fence be installed around the Boys Ranch. She indicated that she spoke to Mark Bullard, Assistant District Attorney in charge of the juvenile center as well as Curt Cumley, the Chief Deputy District Attorney in charge of juvenile delinquency. Both advised her that since the 1995 Grand Jury Report, more violent offenders were being housed at the Boys Ranch in Morgan Hill that include murderers, rapists, sex offenders, robbers, car thieves, etc. She said that part of the trend of sending violent offenders to the Boys Ranch is due to the fact that the COAA is not taking as many commitments as they used to and more of these violent offenders are being sent to the Boys Ranch. She is hoping that the Council would give the residents time at the next Council meeting to address these issues.

City Manager Tewes said that City government shares the residents' concerns about safety of the neighborhoods. He acknowledged that the Boys Ranches have been in the Morgan Hill community for a while and that from time to time, they tend to cause the type of concerns raised this evening. He said that there have been changes made such as the appointment of a new Chief Probation Officer, the closure of one of the Ranches, and that there is a change in the management at the James Boys Ranch. He said that these are issues that the City's Police Department has been working on. He stated that a commitment has been made by the Chief Probation Officer to meet with the neighborhood. He recommended that the City involve the District Attorney's office in a community meeting, inviting the Chief Probation Officer to meet with the neighbors. Legitimate questions can be answered that residents have about how the facility is operated and what safeguards can be put into place. City officials can hear from residents about their specific concerns at a different forum. Following the community meeting, staff would report back to the City Council. He said that City staff will use all appropriate means to notify residents of the community meeting (e.g., mailed notices, contact homeowners association, etc.). He informed the residents that City staff would forward e-mails and letters to the appropriate county officials so that they have residents' concerns.

Council Member Sellers indicated that Santa Clara County Board of Supervisor Don Gage attended a community meeting held a few weeks ago. He conveyed to Supervisor Gage how concerned he and the Council were about the Boys Ranch situation. Supervisor Gage mentioned that the County wanted a little more time as changes are taking place at the Boys Ranch. He advised Supervisor Gage that the City needs to hear what the changes are and have the opportunity to review the changes. He inquired whether Supervisor Gage could have someone attend the Council meeting. He stated that Supervisor Gage responded that he would make sure that a County official attended the Council meeting. He requested that staff contact Supervisor Gage's office and help coordinate a community meeting and attendance at a future Council meeting.

No further comments were offered.

## ***City Council Action***

### **CONSENT CALENDAR:**

Council Member Grzan requested that item 7 be removed from the Consent Calendar.

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1-6 and 9-10 as follows:*

1.    **SECOND AMENDMENT TO CABLE FRANCHISE AGREEMENT**  
***Action:** **Authorized** the City Manager to Execute the Second Amendment to Cable Television Franchise Agreement.*
2.    **APPROVE CHANGE ORDER FOR SIGNING AND STRIPING FOR CLASS II BIKEWAYS PROJECT**  
***Action:** 1) **Approved** Change Order in the Amount of \$14,500 for Additional Striping and Removal Along Butterfield Boulevard and Portions of Dunne Avenue to Comply with Class II Bike Lane Requirements; and 2) **Appropriated** \$14,500 from the Current Year Public Facilities 346 Fund (Measure C CIP) Balance to Cover Costs Associated with this Change Order.*
3.    **ACCEPTANCE OF SIDEWALK IMPROVEMENTS ALONG THE NORTH SIDE OF EDMUNDSON AVENUE FROM COMMUNITY PARK TO MONTEREY ROAD**  
***Action:** 1) **Accepted** as Complete the Sidewalk Addition (Edmundson/Monterey) Project in the Final Amount of \$55,349; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.*
4.    **APPROVE WATER METER SOLE SOURCE PURCHASE**  
***Action:** 1) **Approved** Purchase of Water Meters, Meter Parts and MXU's (Radio Transmitters) from Invensys Metering Systems; and 2) **Approved** Purchase Order of \$299,300 to Invensys Metering Systems for the Annual Supply of Water Meters, Meter Parts and MXUs.*
5.    **SECOND AMENDMENT TO CONSULTANT SERVICES AGREEMENT FOR JACKSON OAKS BOOSTER STATION**  
***Action:** **Approved** Second Amendment to the Agreement with Freitas Engineering for Design and Construction Services on the Jackson Oaks Booster Station, Increasing the Contract Amount by \$6,000; Subject to Review and Approval of the City Attorney.*
6.    **AMENDMENT OF BANKING SERVICES AGREEMENT**

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**Action:** **Authorized** the City Manager to Amend the Agreement with South Valley National Bank to Continue Banking Services through December 31, 2005, Subject to Review and Approval by the City Attorney.

8. **ORDINANCE NO. 1705, NEW SERIES**

**Action:** **Waived** the Reading, and **Adopted** Ordinance No. 1705, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1680 NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-03: TILTON-GLENROCK (APNS 764-9-06, 16, 17, 32 & 33).**

9. **ORDINANCE NO. 1706, NEW SERIES, AS AMENDED**

**Action:** **Waived** the Reading, and **Adopted** Ordinance No. 1706, New Series, As Amended, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE ZONING DESIGNATION OF A 4.8-ACRE AREA FROM R2(3,500) AND CG, GENERAL COMMERCIAL TO R3/RESIDENTIAL PLANNED DEVELOPMENT (RPD) AND ADOPTING A PRECISE DEVELOPMENT PLAN FOR A 67-UNIT MULTI-FAMILY PROJECT LOCATED BETWEEN MONTEREY ROAD AND DEL MONTE AVENUE, NORTH OF WRIGHT AVENUE (APNs 764-12-008, -009, -018, & -019)/(ZA-04-18: MONTEREY – SOUTH COUNTY HOUSING).**

10. **ORDINANCE NO. 1707, NEW SERIES**

**Action:** **Waived** the Reading, and **Adopted** Ordinance No. 1707, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MP-04-02: MONTEREY – SOUTH COUNTY HOUSING (ROYAL COURT) (APNs 764-12-008, -009, -018, & -019)/(DA-04-07: MONTEREY – SOUTH COUNTY HOUSING).**

7. **CO-HOST REQUEST FOR THE FAR WESTERNS CHAMPIONSHIPS SWIM MEET**

Council Member Grzan indicated that he has been sending e-mails to Recreation and Community Services Manager Spier regarding this event. He requested clarification in terms of the scope of the swim meet, days, dollars, funding for the event, how the Aquatic Foundation is involved, etc.

Recreation and Community Services Manager informed the Council that John Rick, President of the Morgan Hill Swim Club, the renter of the facility for this event, was in attendance and could answer Council questions.

John Rick indicated that the Far Westerns Championship Swim Meet will be a 4-day event, and would host approximately 1,300 swimmers. He said that 130 teams will be participating from Canada, Oregon, Nevada, Utah, Idaho, Arizona, California and New Mexico, including the participation of 20-30 future Olympians. This event is expected to book a minimum of 1,200-1,800 hotel nights. He stated that he has coordinated hotel stays with the hotels located along Condit Road to help support this event. He informed the Council that the Morgan Hill Swim Club will be the renter of the event who won the award under a competitive bid process through USA Swimming. He stated that there is no involvement with the Morgan Hill Foundation at this time. He said that the event is expected to generate a substantial amount of profits for the City as well as allow the team to host the meet and cover all its costs. He indicated that the proceeds will be a revenue split of approximately 75/85% net to the City and 20/25% net to the Morgan Hill Swim Club. He stated that there will be the ability to sell swimwear, equipment and concessions and that the City will keep its profits from these sales.

**Action:** *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Directed** Staff to Co-Host the Far Westerns Championships Swim Meet as Outlined in the Report.*

## ***City Council and Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:** *On a motion by Mayor Pro Tempore/Vice Chairman Tate and seconded by Council/Agency Member Sellers, the City Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Items 11-15 as follows:*

**11. DEPOT STREET CAPITAL GRANT ACCEPTANCE – Resolution No. 5876**

**Action:** *1) **Adopted** Resolution No. 5876, Accepting the Metropolitan Transportation Commission's Transportation for Liveable Communities Capital Grant to Improve Depot Street; and 2) **Appropriated** \$341,314 from Fund 317's Balance to Provide the Grant's Required Match.*

**12. LOAN FOR THE ISAACSON GRANARY**

**Action:** ***Approved** Request from Charles Weston and Lesley Miles to Convert Amortized Payments to Interest-Only Payments for a Five Month Period Beginning in January 2005 Thru May 2005.*

**13. ADDITIONAL LOAN FOR OFF-SITE IMPROVEMENTS FOR DAY WORKER CENTER PROJECT**

**Action:** ***Authorized** the Executive Director to Prepare and Execute all the Necessary and Appropriate Legal Documents, Subject to Agency Counsel Review, Needed to Provide an Additional \$15,000 Loan to Charles Weston and Lesley Miles to Construct the Offsite Improvements Related to the Day Worker Center Project.*



**14. JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF DECEMBER 15, 2004**

**Action:** Approved the Minutes as Written.

**15. JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF DECEMBER 15, 2004**

**Action:** Approved the Minutes as Written.

### ***Redevelopment Agency Action***

**CONSENT CALENDAR:**

**Action:** On a motion by Vice-chairman Tate and seconded by Agency Member Sellers, the Agency Board unanimously (5-0) Approved Consent Calendar Item 16 as follows:

**16. ANNUAL STATE REDEVELOPMENT REPORTS FOR FISCAL YEAR 2003-2004**

**Action:** Filed the 2003-2004 Redevelopment Agency's Annual Report of Financial Transactions, Housing Annual Report of Housing Activity, and Property Report.

### ***City Council Action***

**CONSENT CALENDAR:**

**Action:** On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0), Approved Consent Calendar Item 17 as follows:

**17. FUNDS FOR THE SAFE ROUTES TO SCHOOL GRANT PROJECT (CENTRAL-MONTEREY PEDESTRIAN IMPROVEMENTS)**

**Action:** Appropriated \$47,000 in Funds from Unappropriated Traffic Impact Fee Fund Balance to Cover the City's 20% Funding Contribution for this Project.

Council Member Carr noted that the Council just approved item 17, Funds for the Safe Routes to School Grant Program. He noted that for the past couple of years, staff have been applying for these grants and that the City has been unsuccessful in attaining these grants. However, this year, City staff, in coordination with the School District, decided to focus on improving pedestrian access to Britton Middle School and was successful in receiving this grant. He noted that the City will pay 20% of the cost and that 80% of the funds will come from this grant. He felt that Monterey Road and Central Avenue areas were in desperate need of improved pedestrian access. He congratulated City staff on attaining the grant funding for this project.

Council Member Sellers requested that item 17 be reconsidered as he would be abstaining from the action item as he resides within 500 feet of the proposed improvements.

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**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Agreed** to reconsider agenda item 17.*

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Carr, the City Council, on a 4-0-1 vote with Council Member Sellers abstaining, **Appropriated** \$47,000 in Funds from Unappropriated Traffic Impact Fee Fund Balance to Cover the City's 20% Funding Contribution for this Project.*

## ***City Council Action***

### **PUBLIC HEARINGS:**

**18.     RESOLUTION AUTHORIZING THE SANTA CLARA COUNTY DEPARTMENT OF AGRICULTURE AND RESOURCE MANAGEMENT TO ABATE WEEDS – Resolution No. 5877**

Assistant to the City Manager Dile presented the staff report, indicating that staff from the Santa Clara County's Agricultural Commissioners Office has identified properties that may be at risk for fire in the coming year and have requested that these parcels be part of the 2005-Hazardous Vegetation Program. She recommended that the Council adopted a resolution, authorizing Santa Clara County to implement the 2005-program. She informed the Council that Greg Van Wassenhove, Agricultural Commissioner and Inspector Dave Bruni were in attendance to answer questions the Council may have.

Mayor Kennedy opened the public hearing.

Paul Ealey indicated that he received a letter dated December 1, 2004 stating that he has to clear weeds and debris from his yard or that it would be cleared for him. He stated that he moved to the property approximately a year ago and that he was well aware of the problems associated with fires that can be attributed to fallen trees and brush. He indicated that his property is pristine and that he has spent over \$20,000 on property improvements over a one-year period. He had his property surveyed and had it marked clearly from the street. He stated that you can see that there is no debris or weeds on his property. He indicated that he lives on lot 275 and that he has a neighbor who resides on lot 276. However, behind these two lots, there is a lot that has standing trees that are dead, several falling large trees and heavy brush that are a fire danger. He committed to maintaining his property. He requested that the individuals making site visits perform an accurate check before sending these types of letters.

Sandra Beckwith, owner of lot 276, indicated that when you drive along Lakeview Drive and you look into the properties, the Ealey's property is long and narrow and that her property is wide. The property behind her is a wedge shaped property that has dead trees and high brush. She clarified that there are two parcels on Lakeview and that the rest belong to the cul de sac and that it is the cul de sac owners who have the problem.

No further comments being offered, the public hearing was closed.

Mayor Pro Tempore Tate noted that once a property gets on this list, it remains on the list for three years even though the property is cleaned of hazardous brush.

Ms. Dile agreed that once a property is listed on the Hazardous Vegetation Program, it remains on the list for three years. She indicated that staff was not aware of the concerns raised this evening. She indicated that the County program administrators have been good about following up with concerns raised to them. When she spoke with Debbie Craver, the program administrator this afternoon, she was not aware of this situation. She stated that she was not prepared to comment on the individual concerns raised this evening, but that she and County staff would be happy to follow up with the concerns expressed this evening.

Mayor Kennedy recommended that Mr. Ealey speak with City and County staff and discuss specific issues during a break.

Mr. Ealey indicated that he followed up with a letter dated December 20, 2004 that provided his address and phone number and requested that a response be provided. He indicated that he has not received a response to his letter to date.

Mayor Kennedy recommended that the Council defer action on this item until after a short break.

City Manager Tewes clarified that there are several hundreds of addresses on the list. He said that homeowners can remain on the list until the three years have expired or remain on the list if the property continues to be a hazard. He said that there are approximately a dozen addresses on Lakeview Drive. Based on the facts that Mr. Ealey presented, it is possible that the prior owners did not maintain a pristine yard and that may be the reason that his property is on the list. Having confirmed the list, the County only goes out and abates weeds when there are weeds to abate. Therefore, there is a follow up inspection for properties placed on the list.

Upon reconvening, Ms. Dile informed the Council that she and County staff met with the property owners. She requested that the Council move forward with the list this evening. She indicated that County staff will be meeting with the property owner(s) to make sure that addresses are correct and that they have all the problem addresses identified. If a property has been placed on the list in error, staff would return with a revised list, in the future, so that the property(ies) can be taken off the list.

**Action:**      *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5877, Authorizing the Santa Clara County Department of Agriculture and Resource Management to Abate Weeds.*

**19.      DEVELOPMENT AGREEMENT, DA-04-06: COCHRANE-BORELLO – *Ordinance No. 1708, New Series***

Planning Manager Rowe presented the staff report, indicating that the Planning Commission, on a 6-0 vote, recommends Council approval of the Development Agreement for a 15-lot subdivision on a 13.66 acre Cochrane Road parcel.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1708, New Series, the Development Agreement Ordinance.*

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1708, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MP-03-04: COCHRANE-BORELLO. (APN 728-34-007) (DA-04-06: COCHRANE-BORELLO),** by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

Mayor Kennedy indicated that he would be recommending that item 21 be considered at this time as he has received a request to continue item 21.

**Action:**        *It was the consensus of City Council to **Consider** item 21 at this time.*

**21.    GENERAL PLAN AMENDMENT, GPA-04-04/ZONING AMENDMENT, ZA-04-10: MONTEREY ROAD-MORGAN HILL MEDICAL – Resolution Nos. 5881 & 5882**

Planning Manager Rowe presented the staff report, indicating that this is a request to change the land use designation on property located on the westerly side of Monterey Road, north of Cosmo Avenue, from Administrative Office to General Commercial. He informed the Council that the applicant has gone through a site and architectural review process and has obtained approval for a building to be located on the site. He indicated that the applicant would like to include retail uses, including a convenience market on the property. He stated that the Planning Commission considered the request on December 14, 2004 and that a 3-3 vote was taken, a non action vote with respect to a recommendation to the Council. He said that three commissioners concurred with staff's position that a change to retail commercial would be inconsistent with the general plan, specifically goal 9 and policies 9b and 9c. He stated that policy 9b stipulates viability of the downtown and other recognized shopping areas and discourages isolated and sprawling commercial activities along a major road. Policy 9c encourages retail sales at major intersections as a focus of clustered commercial development. He said that the City's previous general plan included policies such that the area in question should be limited to non retail commercial uses primarily as a traffic impact mitigation as the modeling indicated that the capacity of Monterey Road through general plan build out, between Dunne and Tennant, would be exceeded. He said that the general plan policies looked at ways to minimize congestion by placing lower traffic generating uses in this area and that an administrative office designation was identified as appropriate for this purpose. With the 2001 general plan, the policies were shifted toward concentrating retail at major nodes of intersections versus having strip commercial along major thoroughfares. He said that the current general plan continues what was a previous general plan limitation of non retail use on the property in question. He informed the Council that three planning commissioners felt that there was some merit in allowing

retail uses such as a convenience store on the site, noting that South County Housing was developing across the street and the existing Village Avente project is located to the west. These planning commissioners felt that the residential areas could benefit by the convenience of having some retail within walking distance. Given that the Planning Commission took a non action vote on the application, it is recommended that the Council not approve the amendments. Should the Council wish to approve the general plan and zoning amendments, he informed the Council that staff has resolutions available for its consideration this evening.

Mayor Kennedy said that it was his understanding that there are periods of time when the City can consider general plan amendments. He inquired whether the applicant would miss a window of opportunity for consideration should the application be continued.

Planning Manager Rowe stated that should the Council wish to continue this item and any other general plan amendment applications this evening, they be continued to the same meeting date. He informed the Council that tonight's hearing is a general plan floating date, noting that the Council, by policy, limits general plan hearings to two regular scheduled dates of April and October and a third floating date. He said that staff used the floating date primarily for the Downtown Plan to get changes in affect as quickly as possible in order to allow projects in the downtown to compete and develop.

Mayor Kennedy indicated that the applicant informed him during the break that they would be requesting their application be continued.

Mayor Kennedy opened the public hearing.

Mike Achkar, representing the Morgan Hill Medical Center, requested that this item be continued as the staff report contained a few errors and that time was needed to address the errors. He informed the Council that the land was purchased in 1999 and that he has been working diligently with staff in getting the project approved. Morgan Hill Medical Center would like to make this a nice looking building as this area is considered a gateway to the City and the downtown. He indicated that they have been actively trying to lease the building for approximately two years without success. He felt that possible tenants are doctors, noting that most doctors like to locate adjacent to hospitals. He said that almost all commercial buildings in Morgan Hill have vacancies and that there is approximately a 40% vacancy factor. He understands that staff is not supporting the project based on Goal 9 of the General Plan. He did not believe that the proposed amendment would be against Goal 9 because there is retail to the north and south of the property and that the post office is located across the street. Therefore, he does not believe that a change in land use to retail commercial would isolate the site. He informed the Council that they paid for the preparation of a comprehensive traffic study by Keith Higgins and Associates. He stated that the traffic study showed that there is no impact to the City attributed to this project or to the downtown by increasing traffic. He said that he had the opportunity to speak with many of the neighbors adjacent to the project site and that it was indicated that there was a need for a neighborhood shopping center. He noted that many of the adjacent residents do not have forms of transportation and could benefit from retail commercial in the area. He stated that he has been able to negotiate with specialty grocery stores such as Whole Foods and Trader Joes who have been reluctant to come to Morgan Hill in the past due to the numbers. However, they seem to be receptive to locating in Morgan Hill and that they

would like to be in a class A building and would attract neighbors to it with high visibility. He requested that the Council consider their project and that this item be continued to allow them time to correct the errors contained in the staff report.

City Manager Tewes noted that the letter requesting a continuance states that there were errors contained in the staff report and suggests that the report does not portray the material facts. He said that it would be helpful to have the errors identified prior to the grant of a continuance. If staff misstated something, staff would like to have them identified. If it is felt that information was left out that argues for the project, staff would like to know that as well.

Mr. Achker said that the first error was that the Planning Commission recommended denial of the project. He noted that a resolution was prepared to deny the project. There was also an agenda prepared that recommends denial of the project. He felt that these items were working against the project and that he would like to regroup. Therefore, a continuation of the hearing is being requested.

In response to Council Member Grzan's question, Planning Manager Rowe indicated that Little Llagas Creek runs behind the property.

Council Member Grzan indicated that one of the Council's goals from last week's retreat was to look at ways of having projects integrated with creeks and streams. He would like to see how new projects would integrate with Little Llagas Creek. He would not support the installation of a nine foot wall to block the creek. He felt that the Council should be concerned and take a closer look at proposed development along the creek.

Planning Manager Rowe indicated that the building is positioned toward the front of the parcel and that the parking is sited behind the building with a landscaped area around the perimeter of the parking lot which adjoins the creek area. He stated that no fencing is proposed and that the project is opened along the creek area.

Ralph Lyle informed the Council that the Planning Commission's vote was 3-3, which is not an approval or denial of the application. He noted that this is clearly stated in the staff report.

Mayor Pro Tempore Tate noted that the basis for the request for continuance is for errors contained in the staff report, indicating that he has failed to find any errors in the staff report. Therefore, he did not understand the need for a continuance.

Council Member Sellers said that in a non action vote, it is customary to provide the Council with resolutions for approval and denial of a project to provide the Council with an option to take either action. He noted that staff only provided a resolution of denial.

Planning Manager Rowe informed the Council that staff has a resolution for approval for Council distribution should the Council wish to approve the application. He said that the applicant indicated that they would have appreciated the resolution and ordinance to approve the amendments included in the agenda packet rather than being made available for distribution this evening. He stated that the material

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before the Council this evening is the extent of information that could be provided to the Council at this time.

Council Member Carr said that he generally likes to give leeway for requests to continue, but that he did not see reasons to support a continuance. He said that the letter states that there are errors contained within the staff report and that he was not sure what they were. He said that the items raised at the podium do not appear to be errors contained within the staff report.

City Manager Tewes said that it is typically the case that when the Council is faced with these kinds of choices, the Council makes a preliminary determination and directs staff to return with resolutions or ordinances that provide the findings of facts that support the decision made. He indicated that staff cannot anticipate what findings the Council believes will be important to its decision. He stated that what happened this evening was the usual case on how matters are handled.

Mayor Kennedy stated that he would like to give the applicant the opportunity to work with staff to see if they would agree to make changes that would help make the project approvable.

Council Member Tate indicated that he would prefer to proceed with the item this evening.

Planning Manager Rowe said that the bases for recommending denial are based on Policies 9b and 9c in the Community Development Element of the General Plan. Rather than continue a pattern of strip commercial development along a major thoroughfare, the focus for new commercial development is to cluster these developments at the nodes of major intersections. He indicated that the nodes of major intersections include Tennant/Monterey and Dunne/Monterey. He stated that the General Plan was amended to apply a non retail commercial designation to the site and that the current zoning designation is consistent with this. It is staff's belief that to amend the general plan to commercial and allow for retail commercial along the corridor in this area would be inconsistent with the intent of the general plan. However, there are merits that commercial development could benefit/serve the surrounding residential. Staff does not believe that the post office should be considered a retail use. However, he acknowledged that the property to the north has a convenience market and that a commercial center is located south of Cosmo. Therefore, there is a pattern of some existing commercial development. He noted that a mixed use of office and residential is developing in the surrounding area with the Jasmine Square project. He said that prior to the ownership of the parcel, it had a non retail restriction on it for at least 15 years.

Mayor Kennedy said that if left as office commercial, it would be another 10-20 years before the property develops, if ever, and be marketable for office commercial space.

Planning Manager Rowe said that there is currently a lot of industrial land inventory. He said that the Council has expressed concern that decisions are incrementally diminishing the supply of industrial lands because there will be a point in time that there will be a need for industrial zoned lands. He stated that the non retail designation of land inventory is approximately 16-acres city-wide and that there are approximately 200 acres of vacant commercial land inventory standing available. He felt that there is a much greater supply of commercial land than the City has for non retail commercial designation. He did

not know the current amount of vacant office space available but that it was his belief that the vacancy rate of 40% quoted was fairly accurate.

Council Member Grzan stated that he has come to the conclusion that he was not willing to amend the general plan on a lot by lot basis. If there is a reason that this project could meet the general plan goal, he would agree to a continuance. However, without any significant reasons on how this commercial complex could fit the general plan, he was not inclined to approve a general plan amendment. He stated that he would be willing to go along with staff's recommendation and deny the amendment application.

Council Member Sellers felt that some latitude exists. The difference between this request and industrial is that in this case, there is a competing desire to do more along the Monterey corridor. He felt that development should occur in an appropriate way. He said that that business mix is paramount. He said that opportunities are suppressed along Monterey Road, between Dunne and Tennant Avenues. He felt that there was more that the applicant can do to make it a better project that comes closer to meeting the general plan, and yet provides some opportunity for retail. If there was an opportunity to negotiate or to work with staff, he would be inclined to continue the application for a month.

Mayor Kennedy felt that there could be a possibility for a mixed use project at this site as another option. He noted that there is commercial development up to this parcel. He stated that he would like to give the applicant the opportunity to work with staff to see if something can be done.

**Action:**        *Council Member Carr made a motion to close the public hearing. The motion died for the lack of a second.*

City Attorney Leichter informed the Council that it has an adopted policy of closing the public hearing before having Council discussion on public hearing matters.

City Manager Tewes indicated that general plan applications need to be dealt with as a group. He said that it might be an appropriate intent to continue the application, placing this item on hold, pending resolution of item 20 to see if that item gets continued. The Council can then identify the date when all general plan applications will return for Council consideration.

City Attorney Leichter suggested that the Council not continue the application to a date certain but to continue it to a date when other general plan items will be heard, should the Council be inclined to grant the continuance.

**Action:**        *Council Member Sellers made a motion, seconded by Mayor Kennedy, to continue this item to a date when other general plans are to be considered. The Motion failed 2-3 as follows: Ayes: Kennedy, Sellers; Noes: Carr, Grzan and Tate.*

No further comments being offered, Mayor Kennedy closed the public hearing.

**Action:**        *Mayor Pro Tempore Tate made a motion, seconded by Council Member Carr, to Adopt Resolution No. 5881, Denying the General Plan Amendment Request.*



Council Member Sellers said that it is unlikely that doctors would locate along the Monterey corridor. In denying the general plan amendment, the City would be looking at a significant delay in any development potential of the site. He stated that he was not in favor of approving anything that happens to come along Monterey Road in order to have it built out. However, it needs to be understood that by not moving forward, the gaps along this corridor would be a significant hindrance to future development. He felt that there were opportunities for other kinds of development. It may be that the applicant may look at a mixed use development or other opportunities, if unsuccessful this evening. He encouraged the applicant to look at these opportunities. He felt that the current zoning has suppressed growth for a longer period than he was willing to allow.

Mayor Kennedy indicated that that this parcel has been vacant as long as he has been a public servant, 25 years. If it remains in its current general plan designation, it would continue to remain vacant for many years to come. He stated that commercial development along El Camino, in Sunnyvale, has not been a problem, and that he does not see a commercial development of this site as a problem. He noted that the City needs commercial development. If the applicant is willing to build it and a good commercial business is willing to use the space, he felt the City should allow this to occur. Therefore, he would be voting against the motion.

Council Member Carr said that when he served on the General Plan Task Force with Council Member Grzan, they spent a significant amount of time talking about this piece of property, the area surrounding the post office, both sides of Monterey Road, and their importance. He did not believe that just because the site has not developed is a good reason to settle for any use that comes along. He felt that the site has not developed because it is an important site. It may be that the zoning is not correct for the site. However, the City should not jump on a use that is marketable today as more thought should go to the appropriate use of the site. He stated that he reviewed the uses allowed in the zoning district and felt that there were some good uses for this part of town. He said that the responses from the applicant were not satisfactory such that they did not believe that the space was big enough for the approved uses. He was not sure that enough thought has gone into what could develop or the appropriate use for the site. Therefore, he would support the motion to deny the application.

Council Member Grzan concurred with Council Member Carr's comments. He said that there are a number of vacant lots throughout the community. He did not believe that the Council should open a box and allow for this application when it may set a precedent for other areas. He noted that the General Plan was dealt with by a strong group of individuals that took three years to develop. He felt that any changes to the general plan would need to be significant, indicating that he does not see the significance associated with the application.

Charles Weston said that he was one of the Planning Commissioners who voted to deny the application. He noted that it was argued at the planning commission meeting that there needs to be an owner inertia in terms of commercial and residential to get developed. Having commercial in this location seems to be taking away from the desire of the downtown, creating as much commercial as possible elsewhere.

**Vote:**            *The motion carried 3-2 as follows: Ayes: Carr, Grzan, Tate; Noes: Kennedy, Sellers.*

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Carr, the City Council on a 3-2 vote with Council Member Sellers and Mayor Kennedy voting no, **Adopted** Resolution No. 5882, Denying the Zoning Amendment Request.*

**20.     GENERAL PLAN AMENDMENT, GPA-04-07/ ZONING AMENDMENT, ZA-04-14:  
CITY OF MORGAN HILL – DOWNTOWN PLAN – Resolution Nos. 5878, 5879 and 5880;  
Ordinance Nos. 1709, 1710, 1711, & 1712, New Series**

Senior Planner Linder presented the staff report, indicating that the City's consultant was in attendance to answer questions relating to the traffic study. She addressed the proposed amendments to the General Plan text/maps, zoning text/map, and the parking ordinance text amendments proposed for the downtown now that the City has addressed the California Environmental Quality Control (CEQA) documents. She informed the Council that the mitigated negative declaration before it this evening finds no significant impacts or impacts that could not be mitigated based on the temporary narrowing or implementation of traffic calming measures. She indicated that the Planning Commission is recommending a general plan and zoning designation for three opportunity sites, including a general plan designation of multi family high with a density of 21-40 dwelling units per acre.

Mayor Kennedy indicated that there has been a suggestion that a portion of the action(s) before the Council this evening be continued. He inquired as to the reason for the continuance.

Ms. Linder indicated that the continuance pertains to the Sunsweet property and that this shows up on two of the City Council's action items this evening: 1) amendment to the zoning map; and 2) the parameters for development of the property. She informed the Council that it can separate these issues or that all items contained within the report could be continued.

Mayor Kennedy recommended that staff complete its presentation before deciding whether to continue portions of the application or the entire application.

Council Member Sellers said that it has been determined that he does not have a conflict with the items before the Council this evening based on his residency adjacency to the downtown. He said that there is a portion that the Council would be approving in an amendment to the northern portion of the downtown that he would like separated so that he can abstain from voting on that area.

Ms. Linder indicated that the Council could separate the two actions that would result in Council Member Sellers' conflict. She informed the Council that the continuance of the Sunsweet property would involve two action items relating to an amendment to the zoning map which would change the zoning designation on the property from CC-R to PUD and the ordinance that would specify the development parameters that would apply to the PUD.

City Attorney Leichter said that should the Council decide to rezone the Sunsweet property to a PUD this evening, the Council could do so and defer the adoption of the development guidelines associated with the PUD designation.

In response to Council Member Grzan's question, Ms. Linder indicated that a downtown parking study is underway. She said that the Parking Management Plan is expected to be completed in June 2005.

Council Member Grzan recommended that the applications be continued until the conclusion of the parking study.

Mayor Kennedy noted that the Council could take action on many of the items before it this evening.

Ms. Linder informed the Council that parking was analyzed as part of the environmental study that looked at the parking in place at this time and whether the parking would meet the needs of the density being proposed. The study acknowledges that the City will be conducting a parking management plan, a plan on how the City would meet the future parking needs as the City builds under the downtown plan. She informed the Council that residential projects will need to provide on site parking. This standard is not being proposed to change. However, as the City builds out with commercial and mixed uses, long term, the downtown plan suggests that the City puts a plan in motion for additional future parking needs. She indicated that this is what the parking study will assess.

Ms. Linder informed the Council that the Planning Commission recommends approval of the proposed general plan and zoning map amendments. The Planning Commission is recommending minor modifications to the guidelines suggested for the Sunsweet property guidelines (e.g., allow for an additional access onto Third Street; elimination of the conditional use of the residential use for Third Street under the PUD). The Planning Commission is also recommending approval of the R-4 zoning text, multi family high zoning standards, and that the building height be increased from 45 feet to 48 feet. She noted that the downtown plan asks that staff research the parking ordinance to see if there are impediments to businesses and/or mixed uses within the ordinance. She informed the Council that staff reviewed the City's parking standards and found that currently, leeway is given to businesses fronting Monterey Road in the CC-R zoning district as it relates to parking requirements. Staff recommends the City extends this courtesy to all commercial areas within the CC-R zoning district and address the required guest parking requirements. These are two areas where the City can eliminate impediments. She informed the Council that the Planning Commission is not recommending amendments at this time as it was their belief that the City should complete the downtown parking management study to determine how the City would meet the parking needs of today and the future. It is further recommended that the Napa site be included in the mixed use and CC-R zoning district. However, there is concern that waiving the parking requirements at this location may not be in the City's best interest as this site is far removed from public parking. The Planning Commission is not recommending that the parking text be changed at this time.

Council Member Sellers noted that the Planning Commission is recommending a driveway and no residential uses along Third Street.

Ms. Linder informed the Council that the Downtown Plan is specific to what can occur with the Third Street Sunsweet site, including where driveway and parking lot access can and cannot occur. The Planning Commission felt that it might be conducive to have a driveway opening along Third Street. She

said that the Downtown Plan suggests residential on bottom floors and extends to the Third Street frontage of the Sunsweet property. The Planning Commission did not believe that residential should be encouraged on the bottom floor of the Sunsweet site.

Mayor Kennedy noted that the City would be losing public parking spaces behind the Granada Theater in the Downtown Mall as it will become private parking associated with a mixed use.

Ms. Linder said that the parking lot behind the Granada Theater could go away. She informed the Council that the parking management plan would look at the City's long term parking needs and the steps to take to provide for future needs.

Council Member Carr noted that it is being suggested that the site at Diana and Butterfield be changed to a mixed use designation. He inquired why this site is seen as a mixed use opportunity site while the Flea Market site is not.

Ms. Linder informed the Council that she followed the recommendations as proposed in the General Plan.

Council Member Sellers said that there is residential on two of the four corners of Main and Butterfield and that the third corner is being utilized as an office use. There was some interest in tying some commercial into the courthouse. He said that he would like to discuss how you would integrate commercial with the courthouse as he would hate to see the City pull away any commercial uses from the downtown. He stated that the General Plan update committee felt that the mixed use would allow for residential across at Dunne Avenue in order to provide some continuity.

Ms. Linder said that there is a suggestion by the Downtown Association to look at higher density overall. The Planning Commission has indicated that they would like to consider this suggestion as well as the limitations of the PUD so that it does not compete with projects that the City would like to have in the downtown. The Planning Commission would also like to revisit the parking issues once the City has the information from the parking management plan. The Planning Commission expressed concern with too much residential and critical mass. They believe that the City should define what type of retail space is needed in the downtown to support residential.

Mayor Kennedy opened the public hearing.

Rocke Garcia deferred his comments to Mr. Hechtman

Barton Hechtman, on behalf of Glenrock Builders, informed the Council that it should have in its packet a request for continuance. He said that this is a multi faceted agenda item and that he is not asking that the entire item be continued. He stated that the continuance request relates to one of the decisions the Council is being asked to make, but that there is an impact to another action item. He said that the ordinance that changes the Sunsweet property from CC-R to PUD sets forth particular guidelines and is the subject of the letter. He did not know how the City can approve the PUD and continue consideration of the guidelines. He stated that the PUD zoning designation does not allow any particular rights or uses.

To change a piece of property to PUD and not identify how the property can develop creates a non use zoning designation. He requested that the Council not change the zoning on the property this evening and allow him and Mr. Garcia to work with staff; returning to the Council with something that makes sense. He said that one of the actions being contemplated by the Council would be impacted by the continuance as it relates to the first resolution relating to the General Plan text amendments as a portion of it refers to the Sunsweet property. The amendment stipulates 35-45 dwelling units per acre as part of a single planned unit development. It was his understanding that the Planning Commission is recommending 25-40 dwelling units per acre. He stated that there is no objection to this density. However, he did not believe that the Council can approve the text amendment relating to residential development as part of a single planned unit development should the Council continue the other ordinance. Should the Council wish to proceed with the approval of the text amendment this evening, he requested that the Council delete the portion of the ordinance that reads “only as part of a single planning unit development.”

City Attorney Leichter indicated that she disagrees that the City cannot have an empty envelop PUD subject to later filling it with guidelines. Regarding the change in the resolution and not being able to adopt the resolution, she stated that Zoning and Planning Law in the Office of Planning and Research Guidelines specifically allows an entity, after a general plan change, a reasonable time to effectuate changes in the zoning to comport to the general plan changes. She said that it is not necessary that they be done at the same time as long as the general plan amendment is done first. She indicated that the Council could adopt the general plan amendments. She understands that Mr. Hechtman is supportive of changing the density. However, she stated that it is not necessary to drop the other portion of the general plan change regarding the PUD.

City Manager Tewes noted that it was stated that Mr. Garcia would like the opportunity to work with City staff and the City Attorney to craft a set of regulations which serves the City’s desire to ensure the appropriate development of the Sunsweet property. Should the Council agree to the request for continuance, he requested that the Council identify what it believes to be the appropriate objectives. He requested that the Council provide staff with policy direction and that staff would try to figure a way to implement it (them).

Ralph Lyle, speaking as a citizen and not a Planning Commissioner, said that the parking in the downtown is one of the two things he hears about from the community. He said that citizens are not willing to walk from lot to lot as there are several lots that are not well connected. In the parking study for the downtown plan, it addressed the fact that the City had backup parking in the community and cultural center parking lot, noting that it is more than ¼ mile away from the downtown. He indicated that the Transit Authority states that once you get beyond ¼ of a mile, individuals are not willing to walk. He felt that a parking problem exists. If you look at the parking behind the Granada Theater, there are 75 parking stalls. This would be reduced to 45 parking spaces with additional uses being constructed. He felt that there would be a substantial impact to downtown parking when the project develops. He noted that the Council is considering investing \$1.3 million into the Granada Theater. He felt that its success will be in jeopardy because of lack of parking. He recommended that Monterey Road remain as two lanes in each direction as he felt that reducing to one lane in each direction, temporarily, would be money down the drain. He said that an observer could look at the densities in the downtown area and

find them to be arbitrary and not good planning. He said that the Planning Commission tried to soften this somewhat. It was felt that opportunity sites would be better suited to other sites versus those identified, particularly with the third opportunity site behind the Granada Theater. He felt that it would make sense to have consistent density and that the Planning Commission took steps in this direction. However, he felt that more steps need to be taken.

Anthony Goularte, owner of Associated Concrete, indicated that there is a viable business operating on the site and that he does not consider it to be a blighted piece of property. He indicated that the current zoning for his site is light industrial and that he has a heavy industrial use. Therefore, he has a non confirming use on this parcel. If the zoning is changed to high density residential, it is his understanding that he can continue to operate as a non confirming use. His long term viability does not exist to continue as a concrete company at this site based on residential development. He stated that he would be willing to work with Mr. Ahlin to develop the area as one piece in the future. He stated that he was neither in favor or opposed to the recommended zoning changes. He stated that his family has been operating at this site since 1958. He would like to know that he has a future in Morgan Hill. He stated that he has identified some properties in Morgan Hill zoned heavy industrial that he is willing to move his business to. For this to happen, he may need some assistance from the City.

Charles Weston, speaking as a citizen and not a planning commissioner, said that when the master plan for the downtown was developed, it was developed prior to the inception and implementation of Measure C. He felt that there was a disconnect in terms of density. He felt that the 8-18 dwelling units per acre is not dense enough and felt that it should be higher. He felt that the Council should approve a PUD designation on the Sunsweet site as this designation allows for creativity. He felt that the Sunsweet site is one of the most important pieces of property in the downtown and would dictate how successful the downtown will become. He did not believe that negotiations were necessary before designating the site as a PUD as there would be a set of negotiable guidelines to follow. He felt that the Sunsweet site should be denser, the height of the buildings higher, and bolder from what is being recommended. He recommended that the residential area continue with commercial constructed below. He said that the Sunsweet site was supposed to be the connection from the railroad tracks to downtown and Monterey Road. He felt that a blanket of high density (40 du/ac) should be approved versus a pocket of densities. He recommended that that when the parking study is completed, the City incorporate several areas of handicapped accessibility throughout the City.

Mr. Hechtman indicated that he limited his remarks to the continuance request, envisioning that the Council would agree to the continuance. Should the Council not be inclined to continue per the request that he be allowed to address the substance of his concerns.

Mayor Pro Tempore Tate recommended continuance of the Sunsweet site PUD discussion. He felt that a PUD makes sense but felt that the Council should have a substantive discussion on the reason behind the PUD. He said that he would like the site to be more flexible in terms of density and identify what the City would like to see happen on Third Street.

City Attorney Leichter said that should the Council be inclined to grant Mr. Hechtman's request for continuance, the continuance would apply to a portion of action item 3 and action item 7.

Council Member Sellers stated that he would support continuing the actions relating to the Sunsweet site with the understanding that the Council would provide staff with specific directions about its intent.

**Action:** *Council Member Sellers made a motion, seconded by Council Member Tate, to continue the general plan text/zoning amendments as they relate to the Sunsweet property (a portion of GPA-04-07/ZA-04-14: City of Morgan Hill-Downtown Plan). The motion carried unanimously (5-0).*

Mayor Kennedy closed the public hearing on the remaining items.

**Action:** *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration.*

Council Member Sellers said that as a rule, he has not been in favor of higher density. He noted that it is being proposed that there be a range in density associated with a commercial mixed use of 8-18 dwelling units per acre. He inquired as to the density range under the previous zoning.

Ms. Linder informed the Council that the downtown plan recommends that the City's mixed use develops at a density range of 8-18 du/acres. She did not find this density range defined in the general plan for a mixed use. In practice, the City has been approving 8-10 du/acre.

Council Member Sellers felt that there needs to be additional latitude, increasing the density.

Ms. Linder said that staff took its guidance from the recommendations contained within the downtown plan. She informed the Council that the Planning Commission suggested that the City consider higher density. Should the City wish to pursue higher density, the City would need to reevaluate the environmental document.

Planning Manager Rowe said that the density range being proposed as part of the general plan amendment is only for the residential portion of the mixed use. It is proposed to allow ground floor office or retail with 18 du/acre residential units above on the same property with the proposed amendment. He said that there was discussion by the Planning Commission of increasing the density. As a follow up, the Planning Commission has requested that staff return to them with further discussions about the feasibility of increasing residential density in mixed use zoning districts. They would then forward a recommendation to the Council to increase the density. He said that the reason for limiting the residential density to 18 du/ac is because the downtown plan recommends this density range and the environmental assessment was based on this density as being the upper limits with the exception of the opportunity sites. He said further environmental review would be required to increase the density.

Council Member Sellers said that he would like the City to undertake the review of increasing the residential density associated with a mixed use designation.

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Ms. Linder informed the Council that Measure C limits the number of building permits that can be issued to a project, but does not limit the residential density.

City Manager Tewes said that Measure C does not establish density regulations. He stated that from time to time the Council decides certain set asides for various types of allocations. He noted the Council established a set aside for vertical mixed use and established a number of units that could compete under this category. He informed the Council that it can change the set asides in the next competition. He said that the underlying regulations for density are contained in the general plan and the zoning text.

Council Member Carr agreed that the mixed use is not dense enough and would like to find a way to increase the density. He understands the limitation of 15 set aside units for mixed use. It was his recollection that there was a carry over to the next year.

Ms. Linder indicated that the Council could increase the set asides to allow for larger projects. However, it would not allow for an increase in density.

Council Member Carr stated that he was not suggesting that the mixed use be made denser than Measure C allows. He recommended that the Council think about this relationship when it thinks about increasing the density from 8-18 du/ac.

City Manager Tewes said that Measure C does not establish the vertical mixed use allocations and that it was the Council that established this allocation through its own procedures and policies adopted by resolution for each competition.

Ralph Lyle said that Measure C defines small vertical mixed use that is limited to a 15-unit project. He stated that the Council has set aside 10 units per year for vertical mixed use development, initially. He noted that there is separate set aside for larger projects, projects greater than 15 units. Therefore, a developer could come in with a vertical mixed use project of a size of 40-60 units and request allocations from the large project set asides.

Council Member Grzan expressed concern with the design. He felt that there was an opportunity for the Council to require that the design be consistent to what is seen in the downtown. He recommended that any development be consistent with the theme of the downtown. He did not want to see a mixture of modern or early architecture being constructed haphazardly, but that the downtown be consistent and cohesive in its theme.

Ms. Linder said that there is a section in the downtown plan that addresses the architectural and development guidelines that would be applied to the downtown. These guidelines are to be incorporated in the process of updating the City's design review ordinance.

Council Member Sellers noted that staff is requesting direction. He said that the downtown plan made clear that Third Street is viable corridor and that its development is vital to the downtown. He said that continuity of commercial through the downtown is important as it connects to the courthouse and the downtown and is a viable contiguous component of the entire downtown plan. He understands that the



economy may not be such that a developer is comfortable with proceeding with development. He felt that there were ways to work together to develop the site. He felt that it was important that staff and the property owner talk about how to provide opportunities to have the commercial core develop. He said that he would like to see the first floor, from Depot all along Third Street, develop as commercial. He felt that there needs to be some discussion about allowing commercial along Depot between Second and Fourth Streets. He felt that high residential is vital and would provide the balance being sought for the downtown. He said that high density in the downtown would be a different model and that looking at what has been done in the past would be hard to apply. He would like to see creativity applied as the downtown develops.

Mayor Pro Tempore Tate said that he was not convinced on the residential portion. However, he felt that latitude should be given in terms of density. He stated that he supports the Planning Commission's recommendation of the 25-40 du/acre recommendation.

Mayor Kennedy agreed that 25-40 du/acre would provide developers latitude to make business decisions and work toward the Council's goal of higher density in the downtown. He felt that staff could work with developers to find ways to maximize the density for the Sunsweet site.

Council Member Carr would concur with applying flexibility. He felt that the City needs to find a way to achieve higher density. He agreed that commercial along the first floor on Third Street from Depot to Monterey should be the goal in order to draw individuals.

Council Member Sellers indicated that he would need to recuse himself from voting on the general plan map and the zoning map relating to the Central Avenue site.

Council Member Carr noted that the Planning Commission talked about a more consistent density of up to 60 dwellings per acre. They further directed staff to devise a plan and implementation procedures for adding at least 50,000 square feet of commercial/retail. He inquired where this recommendation would fit in.

Ms. Linder said that this is not a recommendation to the City Council at this time. She said that it was a suggestion that the Planning Commission go back and revisit these items. The Planning Commission believes that these are additional studies and discussions that need to be undertaken in the future that may include additional environmental review.

Planning Manager Rowe requested that the Council provide policy direction whether it concurs that the Planning Commission should undertake these discussions in the future.

Council Member Carr agreed that it was important to talk about consistency. He supported higher density in the downtown and the addition of commercial square footage.

**Action:**      *On a motion by Mayor Kennedy and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **Adopted** Resolution No. 5878, Approving the General Plan Text Amendments.*

- Action:**      *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **Adopted** Resolution No. 5879, Approving the General Plan Land Use Map Amendments for Two Separate Areas within the Downtown Area, excluding the Central Avenue property.*
- Action:**      *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Sellers absent, **Adopted** Resolution No. 5880, Approving the General Plan Land Use Map Amendments for One Separate Area within the Downtown Area, approving the Central Avenue site.*
- Action:**      *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1709, New Series, Incorporating an R-4 Multi-Family High Density Residential District into the Morgan Hill Municipal Code.*
- Action:**      *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1709, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE MORGAN HILL MUNICIPAL CODE INCORPORATING CHAPTER 18.17, ESTABLISHING AN R-4 HIGH DENSITY RESIDENTIAL DISTRICT**, by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*
- Action:**      *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Sellers absent, **Waived** the Reading in Full of Ordinance No. 1710, New Series, Amending the City's Zoning Map that includes the Central Avenue site.*
- Action:**      *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1710, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE ZONING DESIGNATION ON 11.13 ACRES WITHIN THE DOWNTOWN AREA AS DEFINED IN THE DOWNTOWN PLAN AS THE AREA LOCATED BETWEEN THE SOUTH SIDE OF EAST CENTRAL AVENUE AND NORTH OF EAST MAIN AVENUE, BETWEEN MONTEREY ROAD AND THE RAILROAD TRACKS (APN 726-23-001 THROUGH 015)** by the following roll call vote: AYES: Carr, Grzan, Kennedy, Tate; NOES: None; ABSTAIN: None; ABSENT: Sellers.*
- Action:**      *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1711, New Series, Amending the City's Zoning Map on Three Separate Areas within the Downtown Area, excluding the Central Avenue site.*

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1711, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE ZONING DESIGNATIONS OF TWO SEPARATE AREAS TOTALING 7.07 ACRES WITHIN THE DOWNTOWN AREA AS DEFINED IN THE DOWNTOWN PLAN (EXCLUDING THE CENTRAL AVENUE SITE)** by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

**Action:**        *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1712, New Series, Amending Chapter 18.50 of the Morgan Hill Municipal Code, Off-Street Parking and Paving Standards.*

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1712, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING TEXT AMENDMENTS TO THE MORGAN HILL MUNICIPAL CODE CHAPTER 18.50 OFF-STREET PARKING AND PAVING STANDARDS**, by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

**22.    GENERAL PLAN AMENDMENT, GPA-04-08/ ZONING AMENDMENT, ZA-04-20: TENNANT-HUANG – Resolution No. 5883 and Ordinance No. 1713, New Series**

Planning Manager Rowe presented the request to amend the general plan land use designation for two parcels located on the north side of Tennant Avenue, at the intersection of Caputo Drive from Industrial to non retail commercial and to amend the zoning designation from Light Industrial to Administrative Office. He informed the Council that staff and the Planning Commission recommend that the general plan amendment be expanded to include the northeast corner of Tennant and Caputo Drive which has an existing commercial office and warehouse building. He indicated that a letter was received from Marjory Lincoln, the owner of the building at the northeast corner of Tennant and Caputo dated January 7, 2005. Ms. Lincoln is requesting that the industrial designation not be changed as the warehouse portion of the building is being used and that an amendment would render the use non-conforming. He informed the Council that the proposed amendment would result in a non conforming commercial use for a portion of the building. The warehouse use can continue as a legal non conforming use for an indefinite period of time. He clarified that there is a provision in the zoning code that addresses a cessation of a non conforming use for periods of greater than six months. He said that the Council could address the property owner's wishes to retain the current land use designation, but staff does not recommend the service commercial zoning designation as the warehouse portion of the building would be a legal non conforming use. He indicated that the recommended actions before the Council are to approve the negative declaration, adopt a resolution that would amend the land use designation from industrial to non retail commercial, and waive/introduce the ordinance to allow for the change in zoning.

Should the Council approve these action items, the applicant would proceed with plans for a medical/dental office.

Mayor Kennedy opened the public hearing.

Bill Schwerm, representing the Lincoln family, indicated that the Lincoln building was built under a CS zoning designation and that all uses conformed to the zoning. In 2001-02, the City came to the Lincoln family and asked to acquire some of their property to complete the Butterfield Boulevard extension. At that time, the Lincoln family gave up seven parking spaces for the Butterfield Boulevard extension. The Lincolns were assured that the zoning of the property was CS and that the uses were conforming and could continue with uses with the exception that there was not enough parking for professional office. The Lincolns were not aware that the zoning was changed to light industrial as part of the general plan amendments in 2002. They became aware of this change in December 2004. To rezone it again to administrative office would render 1/3 of the property useless. He noted that the property consists of two buildings: approximately 7,000 square feet of warehouse and 12,000 square feet of office space. If rezoned to administrative office, approximately 6,000 of the 7,000 square foot warehouse space could not be used as administrative office space because there is not enough parking on site. He requested that the zoning be light industrial or restored to CS zoning as the property was built for these uses and would match the zoning across the street.

No further comments being offered, the public hearing was closed.

Planning Manager Rowe informed the Council that only the 7,000 square foot warehouse use is conforming. The recommended action before the Council would reverse the situation and would make the warehouse a legal non conforming use but would make the office portion of the building conforming. He said that zoning as service commercial would still make the warehouse use a legal non conforming use. He informed the Council that a use permit was approved that allowed the office and the warehouse relationship and that parking standards were applied to these combined uses.

Mayor Kennedy felt the application could move forward if the last sentence contained in the first paragraph of the summary was eliminated with regard to the northeast property and making the appropriate modifications to the ordinance.

Council Member Sellers said that if the Lincoln property had not been built out, he would be inclined to support the Planning Commission and staff recommendation.

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration.*

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Adopted** Resolution No. 5883, the General Plan Amendment Resolution, excluding the Lincoln property.*

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**Action:** *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1713, New Series.*

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1713, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE ZONING DESIGNATION FROM ML, LIGHT INDUSTRIAL TO CO, ADMINISTRATIVE OFFICE FOR ONE PARCEL TALLING 1.45 ACRES LOCATED AT THE NORTHWEST CORNER OF TENNANT AVENUE AND CAPUTO DRIVE (APNS 817-29-027), (excluded Lincoln property site), by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

## ***City Council and Redevelopment Agency Action***

### **OTHER BUSINESS:**

#### **23. COUNCIL REVIEW OF DOWNTOWN TRAFFIC CALMING OPTIONS**

Director of Public Works Ashcraft presented the staff report, presenting the traffic calming options. He informed the Council that in general, speeding is not a big problem in the downtown, but that there are places in the downtown where cars travel faster than in other areas. Staff has taken some actions and will be recommending other items to try and curb this behavior. He said that there is a problem with some drivers not stopping for pedestrians at crosswalks. He did not believe that there would be a problem every time you cross streets; however, pedestrians have to watch for traffic as they cross streets. Staff recommends that the City proceed with a list of improvements as listed on page 359 of the staff report to meet the funding limits of \$125,000 [e.g., 1) Dunne/Monterey intersection narrowing; 2) 12' lane reduction striping to 10.5' lanes; 3) high visibility crosswalks at 1<sup>st</sup> and 3<sup>rd</sup> streets.; and 4) two mountable and removable speed cushions or installation of trees in median immediately north and south of 4<sup>th</sup> street. It was staff's belief that the installation of trees would be the better expenditure of funds at this time versus the use of the speed cushions.] He identified alternative traffic calming options and their costs. He indicated that Sorhab Raschid, Fher & Peers who helped prepare the downtown traffic calming plan presented at the Council workshop, was in attendance this evening.

Dan Craig, representing the Morgan Hill Downtown Association, said that an internal workshop held several months ago, the Downtown Association identified priorities of what they believed were the biggest issues in the downtown, with traffic calming being one of the biggest concerns, second to the Granada Theater renovation. He disagrees with the finding that there is not a serious speeding problem in the downtown. He stated that there are members of the Downtown Association that still support one line in each direction. He said that the Downtown Association understands that there is \$125,000 dedicated to traffic calming in the downtown. He said that the Downtown Association is in agreement with staff's recommendations with the exception of the \$75,000 for narrowing the Dunne/Monterey entry point which is a substantial portion of the budget. The Downtown Association does not see how

this item would calm traffic as the problem areas are associated with Main, First and Third Streets. He would like to see this action item set aside to see how this money can be better utilized. The Downtown Association does not support the installation of trees as a traffic calming measure. They would like the use of the two radar speed notification signs. Further, it is being recommended that there be a use of banners over the roadway that would announce community events and be used as a message to slow traffic down in the downtown. At the intersection of Second and Monterey, there was discussion at the workshop that there are pedestrian refuges. He said that this area is constructed with cobblestone material and is not handicap accessible. He recommended that some funds be used to flatten this area to give a pedestrian feel to individuals not able to cross the street.

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) moved to extend meeting time to midnight.*

Mr. Ashcraft felt that the reduction of the lane from 12' to 10.5' would be the most cost effective item that can be done in the downtown to slow traffic versus the use of removable speed cushions.

Council Member Carr inquired whether the dashed lane and the line closest to the sidewalks can be moved so that everything is moved closer to the median, providing more space between cars and pedestrian.

Mr. Ashcraft indicated that lines are thermomast painted and would need to be grinded off. If you grind too far, you would remove pavement. He said that moving the center line would add an additional \$10,000 in cost.

Mayor Pro Tempore Tate said that there is some concern whether the \$75,000 expenditure would be effective. He inquired whether there was a way to try this alternative on a temporary basis.

Mr. Ashcraft said that this could be done with asphalt berm and painting. However, it would look unsightly in front of the community center. He has no doubt that doing this will slow traffic down in front of the community center heading north. It is not known how long the slowing down affect would continue.

Mayor Kennedy said that he has had several individuals tell him that the lighted crossings are effective. He inquired whether the traffic consultant has recommended that these be installed and whether results were associated with their installation.

Sorhab Rashid, traffic consultant, said that he has seen lighted crossings installed. He said that there have been some cases the benefits have been noticeable. In other cases, it is a mixed situation. He noted that this is a non standard situation for this application as there are two separate crosswalks. He said that lighted crossings are most effective when you have a single crosswalk located mid block.

Mayor Kennedy opened the floor to public comment.

Brad Jones felt that there was a flaw in the plan as those who observe downtown traffic were not consulted. He felt that the most effective action to slow the traffic in the downtown would be to narrow the lanes to one in each direction. The next most effective solution would be to have the Second Street signal lights as flashing red lights and the installation of stop signs at First, Third and Fourth Streets in both directions. These alternatives could be installed with almost no cost to the City. He stated that traffic accelerates after First Street heading south. Slowing traffic down at Second Street is important. Installing stop signs or cushions would make most individuals drive under 30 mph. He did not believe you need a speed cushion on First Street heading south. He indicated that at Second and Monterey is where individuals pick up speed and that they pick up speed until they get to Dunne Avenue. He recommended the installation of a stop sign at Third Street for a short period of time to see what type of reaction would be seen.

Mayor Kennedy inquired whether there could be periodic enforcement of traffic control in the downtown.

Police Chief Cumming said that enforcement could be implemented but that there is difficulty in keeping police officers there consistently as police officers get called away. He said that at the beginning of the school year, the City spent some overtime in placing extra officers on duty, concentrating in school and downtown areas. He felt that this work was successful in making individuals realize the speed of the downtown area, issuing a lot of tickets.

Mayor Kennedy said that another possibility would be to increase overtime for traffic enforcement in the downtown.

City Manager Tewes noted that the budget for traffic calming will be from Redevelopment Agency funds, noting that these funds cannot be used for police officer overtime. Overtime would come from the general fund.

No further comments were offered.

Council Member Sellers did not recommend proceeding with narrowing the intersection of Dunne/Monterey fronting the community center. He stated that he would support recommending item 2, the lane reduction and the high visibility crosswalks at First and Third Streets. He recommended a thorough steam cleaning of the brick pedestrian crosswalks. He stated that he would support moving forward with items 4a and 4b; the speed cushions and the installation of trees in the median; although he did not believe that a speed cushion was needed at First Street. He recommended that they be installed further south in the south bound lane. He would support the Downtown Association's recommendation of the extension as it would help slow traffic down and would provide the traffic calming residual benefits. He felt that the City could address the pedestrian refuge accessibility issue, removing the cobblestones to make the refuge more accessible. He noted that the City will be using the speed notification signs. He recommended that speed notification signs be deferred until their effectiveness south bound is determined. He clarified his support of items A2, A3, 4a, 4b, add the extension; considering the speed notification signs. He requested a follow up report on the effectiveness of having flashing red signals at Second Street as it may have a significant impact on slowing traffic and the

residual problem that this may cause. He requested that feedback be provided to the Downtown Association and/or the Council in order to determine whether this should be implemented.

Council Member Grzan stated that he would support imbedded pedestrian pavement lights. If the Dunne/Monterey intersection is not to be narrowed, he recommended that a few less trees be planted. This would result in having the \$100,000 necessary to install the First and Third Street embedded pedestrian light. He indicated that these lights were installed at Foothill College and individuals started to slow down before they got to them. He finds their use to be effective.

Council Member Sellers said that he has seen imbedded pedestrian pavement lights in San Luis Obispo and Monterey. He said that they were effective, noting that they were installed on narrow, one lane streets. He would recommend that if the City is to proceed with this alternative, that they be installed in one or two directions. He said that there are logistical issues that might diminish their effectiveness.

Mayor Kennedy agreed to the elimination of the narrowing of Dunne/Monterey, deferring to a future time, if needed. He stated his support of A2 (narrowing lanes from 12' – 10.5'). Instead of proceeding with A3, he recommended the imbedded pedestrian pavement lights at First and Third Streets, using general fund reserves to help pay for this. He supported item 4a and 4b, relocating the speed cushion northbound from First Street, moving it further south. He supported the installation of trees in the median to further create a slowing of traffic. It is his understanding that B1 (impact fees) is to be completed at a later date. He supported the downtown entry statement as recommended by the Downtown Association. Further, he supported the two radar speed notification signs as it is a good low cost option. He would support the use of general fund reserves for increased traffic enforcement (overtime).

Council Member Sellers recommended that the imbedded pedestrian pavement lights be installed at First Street at the south crosswalks and at Third Street at the north crosswalks as this is where most individuals cross.

Mayor Pro Tempore Tate noted that staff recommends spending 60% of the City's limited funds at the Dunne/Monterey intersection. He said that he did not want to see this alternative be thrown out arbitrarily as he would like to try this option. He did not believe that you need to spend \$75,000 to figure out whether it will work or not. If staff believes that this solution is worth spending 60% of the funding, he felt that the City should try it in some limited fashion to determine its affect.

Mr. Rashid said that temporary use of planters could be used to achieve vertical treatment with the use of traffic markings.

Mayor Kennedy suggested the use of planter boxes with temporary curbs as a solution.

Council Member Carr stated that he was not ready to eliminate the Monterey/Dunne alternative as it would help match the rest of the corners in the downtown. He noted that most of the corners in the downtown have the bulb outs already. He felt that there were a lot of things that can be done to make sure that it does not give the appearance of a big white blob in the summer and/or blinds drivers. He felt



that a solution could add aesthetics to this important corner and to the community and cultural center. He recommended installation of the high visibility crosswalks for \$10,000. If the City does not see benefit from this, the Council could consider the imbedded lights. He sees the benefit to the lights at night time. However, he hears that the traffic issue in the downtown is a daytime issue. He does not believe that the imbedded lights would have as big of an impact. Therefore, he would like to try the high visibility crosswalk, the least expensive alternative to see if benefits can be achieved by this solution. If not, the Council could take a look at the installation of pavement lights. He did not see anyone disagreeing with the lane reduction, the use of speed cushions and the installation of some trees. He liked the idea of funding for speed enforcement and dedicated police time in the downtown.

Council Member Sellers recommended that staff cost out items as identified by the Council, including the extensions, pedestrian refuge. Staff to return to the Council with the list and costs associated with the items at its next meeting.

Mr. Ashcraft said that once a final decision is made, staff can proceed with the construction of the items listed under the “A” list this summer and complete them before school opens in the fall. He said that this would add nicely to one public bid in conjunction with the improvements to be installed at Central and Monterey Road.

**Action:**            *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council **directed** staff return with a list of traffic calming items as identified by the Council this evening, costing these items out.*

Council Member Tate did not believe that there was clarity on the recommendation of the lights in the pavement. He did not agree to their installation.

Council Member Sellers recommended that the impeded pedestrian crosswalk lighting be listed as a bid alternate.

Mr. Ashcraft said that staff would use paint for high visibility crosswalks. If the City likes this solution, thermomast could be used at a later date.

**Vote:**            *The motion carried unanimously (5-0).*

City Manager Tewes said that it was his understanding from the motion that staff is to return next week with a list of options; costing out the alternatives identified by Council this evening. He said that it was not clear whether the Council wants to revise the budget strategy relating to the use of the general fund. If the Council is willing to allocate additional funds for traffic control, he indicated that this would not be staff’s highest priority as there are other places in the community where there are safety issues that need to be addressed. He requested clarification as to the amount of money the Council is talking about or whether the Council is talking about occasional overtime for occasional enforcement.

Council Member Sellers clarified that he would like to see a list with cost associated with the items. He said that use of the general fund will be part of the discussion when this item returns to the Council.

Mayor Kennedy said that he could see increasing the budget from \$25,000 to \$50,000 in funds for increased traffic enforcement; possible 3 or 4 times over a period of time.

Council Member Sellers recommended that items 25 and 26 be deferred to January 26, 2005.

Mayor Kennedy suggested that item 26 be deferred and requested that Council members e-mail their individual appointment preference to him. He would return with a proposed assignment list.

City Manager Tewes indicated that based on the Council retreat, staff would be returning with a resolution establishing standing committees on February 2, 2005.

#### **24. INSURANCE REQUIREMENTS FOR IMPROVEMENT AND SUBDIVISION IMPROVEMENT AGREEMENTS**

Finance Director Dilles presented the staff report, indicating that on December 15, 2004, the City Council considered a time extension for the McLaughlin-Jones Morgan Station project. As part of that discussion, the Council heard about insurance difficulties encountered by the developer. It was indicated that staff was requiring extension of completed operations liability and that such coverage was not part of the previous coverage provided to and accepted by staff on the project. Further, the South County Housing representative stated that this coverage was not available in the market place. He stated that the Council instructed staff to accept the insurance offered by the developer for this project in order to allow them to commence construction as the same insurance was previously accepted by City staff and the fact that the City is partnering with this non profit, low income housing organization.

Finance Director Dilles informed the Council that staff has compiled a list of subdivision improvement agreements approved by the Council over the last year. He said that the list shows, in general, developers were able to meet the City's insurance requirements. In addition, staff learned that South County Housing is now able to secure the complete operations coverage at a cost of \$20,000. He said that letters from Dick Speck, Dividend Homes, and from South County Housing state that obtaining the coverage is problematic and expensive. He stated that staff has spoken with the City's insurance advisors, ABAG Plan, regarding their recommendation for insurance requirements for subdivision improvement agreements. Based upon their input, staff has come up with the following recommendations: 1) The City should continue the extension of on going and completed operations coverage to the City as it is important for the City to be protected in case of a lawsuit attributed to a defect in the offsite improvements related to a project. The ABAG Plan recommends that the developer obtains the completed operations coverage and that this coverage be extended to the City and that this be explicit in the agreement. 2) The Liability coverage should be at least \$2 million per occurrence, an increase from the current \$1 million requirement. He acknowledged that insurance costs would be more unless the developers are already paying this higher coverage. 3) Aggregate coverage should be doubled per occurrence, noting that the current amount is \$1 million. This would be an increase in the initial cost to developers. 4) The insurance should be occurrence based. He said that this is a requirement that staff looks for in every agreement. Staff is to be more explicit in the agreement to make it clear that the City is requesting occurrence based insurance and not the claims made insurance. 5) A commitment to have

an extended completed operations insurance for an explicit period of time. In addition, staff recommends that an exception apply under certain conditions (e.g., City partners with an agency or with an affordable housing, non profit developer). In order to fund the insurance, the City or Agency would pick up the price tag for the higher premium for the extension of the completed operations coverage to the City.

Finance Director Dilles informed the Council that South County Housing has asked that the Council approve the exception and that it defer any decisions about any of the other recommendations in order to receive additional input from the development community. He stated that other developers have indicated that they would like to have more input in the process and have requested a delay. He said that staff believes that it is appropriate to receive as much input as possible from the development community before making changes. He said that staff did not anticipate an increase burden on developers when starting out with this process and returning with a set of increased requirements. In talking with the City's ABAG Plan, they believe that it is appropriate to increase the coverage in some cases. He said that it would be appropriate for the Council to direct staff to contact the local development community and receive their input on the proposed changes before implementation. However, the Council may wish to consider approving the exception relating to non profit, affordable housing development.

City Manager Tewes indicated that the Council also heard from Mr. Kosich on December 15, 2004 who had contractual commitments and was hopeful that he would be able to secure insurance and complete the subdivision agreement before the end of the year. He requested that the Council bring this topic back the first meeting in January 2005. He informed the Council that he met with Mr. Kosich during the furlough period and that he was able to provide the required insurance. Therefore, his subdivision improvement agreement was approved in a timely manner.

Finance Director Dilles informed the Council that an agreement with South County Housing has not been executed because they have not met the current insurance requirements. He noted that the Council directed staff to accept the lesser insurance for the Morgan Station Project. He said that South County Housing's Viale project is pending at this time and that they are interested in receiving feedback on this particular issue.

Mayor Pro Tempore Tate felt that developers were limited by the insurance they are able to secure. If the City is going to place insurance requirement on development projects that are not available, the City would be tying developers' hand. He said that it is getting even more restrictive for developers to secure insurance at the same time the City wants to secure additional insurance.

Council Member Grzan inquired as to what other cities are doing to address this problem.

Finance Director Dilles stated that ABAG Plan advised that the City's requirements are consistent with other cities in the ABAG Plan. He said that ABAG Plan is starting to hear from other cities the similar issues. He indicated that the City is one of 32 cities in the ABAG Plan and that the City has a \$100,000 deductible. After this deductible, there is a \$5 million per occurrence pool. He stated that the ABAG Plan insures the City, but that they do not insure developers.

Council Member Grzan recommended that staff contact a couple of cities to see if they are complying with the ABAG Plan or whether they have found it impossible and developed their own policy. Should the City decide to partner with a non profit, affordable housing developer, the City would need to look for another resource to extend insurance coverage to the City.

City Manager Tewes said that staff does not recommend that insurance fees be waived. If it is the Council's policy to pay the difference in insurance cost for low and moderate income housing project in order to extend coverage to the City, the insurance cost should come from the low and moderate income housing funding source. He said that the risks remain the same no matter who the City partners with. Staff is recommending that the risks be insured. If part of the partnership means that there are additional costs, these costs need to be factored into the assistance to be provided to that project.

Finance Director Dilles informed the Council that it is staff's intent to contact each developer and ask for their input should the Council agree to continue this item.

Council Member Carr noted that staff is recommending that action items A-E be deferred, but that the Council take action on action item F and talk about additional funding. He requested that staff keep in mind that it may be difficult to obtain completed operations coverage. Therefore, the City may wish to consider insurance requirements more than an on going operations insurance and that it may be less than the completed operations coverage.

Mayor Kennedy opened the floor to public comment.

Rocke Garcia, Glenrock Builders, indicated that developers are in an insurance crisis. He said that he was able to solve his problem because he was able to pass the insurance requirement onto the general contractor of his project. He said that he put up bonds for the off site improvements for the sixth phase of the Capriano project with a bond amount of \$754,000. He stated that he was quoted over \$125,000 and up to \$150,000 to provide the insurance the City required. He felt that there were two major issues: 1) there is a one year warranty period after the off site improvements are completed and then a "defect period" comes into play over a 10-year period. He said that this is where the problem exits with completed operations insurance. He inquired what responsibility the City has regarding the off site improvements and the maintenance thereof.

Barton Hechtman stated that he was in attendance to ask for a deferral of this item so that the development community can meet with staff. Therefore, he is supportive of the continuance. However, instead of having individual meetings with each developer, he recommended that a roundtable discussion be held, inviting representatives from ABAB, insurance industry and the home builders association. Having a roundtable meeting with everyone in attendance would result in everyone hearing the same information. He felt that the Council needs to be fully informed when this item returns. The City needs to know the impacts associated with changes to insurance requirements on development in Morgan Hill.

Barry Link, commercial casualty insurance broker, indicated that insurance is difficult to come by for the construction industry and that it continues to be this way with no improvement in sight. He addressed the \$2 million limit and the \$4 million aggregate. He said that you tend to see \$ 1 million limits with most constructions. In order to get to the \$2 million limit, you need to go above and beyond the base primary policy and get into an umbrella policy, increasing the costs by as much as 50%. On a \$700,000 home, this could add \$21,000-\$28,000 in insurance costs. Adding an umbrella insurance policy would increase these costs. He indicated that he has heard many developers talk about declaring bankruptcy because of insurance costs. He stated that there are also costs associated with workers compensation and health insurance on top of liability insurance. The requirements placed on developers carries over to the entire operations for all projects, not just for those projects being constructed in Morgan Hill. He stated that he was not clear on the 3-year continued completed operations. He inquired whether the City was requiring a developer or contractor to provide a renewal policy for three years after the completion of a project or whether the City was talking about an additional insured endorsement providing completed operations to the City. If this was the case, he did not believe that residential contractors would be able to secure this insurance.

Scott Schilling said that the general liability insurance policy is still in a crises state. He stated that in the State of California, there were 3-4 companies he could go to in order to obtain this policy. Five years ago, there were over 20 companies in California. He stated that within the last couple of years, the State adopted SB 800. It was the hope that this legislation would help ease the insurance crises and companies would return to California, noting that this remains to be seen. He said that the \$2 million and the \$4 million issue will be a significant cost increase. He requested that the Council receive input from the development community as recommended by Finance Director Dilles, allowing developers to meet with staff and others in order to try and come up with something that will work for everyone involved.

Andy Lief, South County Housing, said that when South County Housing was asked to provide completed operations endorsement to the City, it was not available. He said that what was subsequently available was not the completed operations endorsement but that they provided the City with additional coverage. He requested Council consideration of a policy direction relating to recommendation F this evening so that the Viale project can move forward. Regarding the completed operations and the need to extend it to three years, he agreed that this is a major problem.

Joe DiConza, representing the San Pedro Villas project, noted that Measure P projects are usually built in phases. You receive approval of a development agreement for phase I with the approval of insurance certificates acceptable to the City. Then you have another development agreement for phase II only to find out that the insurance certificates are not acceptable because policies change. He was fortunate to be able to change his policy to accommodate policy changes. He said that this resulted in an increase of \$21,000 for the insurance policy. He said that the cost to insure a 32-unit housing project is \$950,000 which equates to approximately \$30,000 per unit. He said that it was encouraging to hear that the development community would be given the opportunity to comment. He recommended that individuals from the insurance industry be invited to the meeting.

No further comments were offered.

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**Action:**      *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **Directed** staff to meet with developers in a round table format, encouraging participation from the insurance industry and other key individuals in a collaborative process; and **Approved** item F as listed in the executive summary, with a commitment to provide funding needed to purchase the insurance for the South County Housing project, a City partnership. Staff to return with the appropriate documentation and funding recommendation for this specific project.*

**Action:**      *On a motion by Council/Agency Member Carr and seconded by Mayor/Chairman Kennedy, the City Council unanimously (5-0) **Agreed** to extend the meeting to 12:30 a.m.*

**25.      DOWNTOWN AREA BUILDING ALLOTMENT**

**Action:**      *By consensus, the City Council continued this item.*

**26.      REVIEW OF CITY COUNCIL COMMITTEES AND APPOINTMENTS TO OUTSIDE AGENCIES**

**Action:**      *By consensus, the City Council continued this item.*

***Redevelopment Agency Action***

**OTHER BUSINESS:**

**27.      DOWNTOWN REQUEST FOR PROPOSAL (RFP): GRANADA THEATER AND GUNTER BROTHERS GRANARY**

Director of Business Assistance and Housing Services Toy presented the staff report, addressing key points for the Gunter Brothers Granary; Sunsweet site; Booksmart/Thinker Toy, and the Granada Theater projects. He said that staff would try to negotiate agreements and to keep the Economic Development Committee (EDC) and the Redevelopment Agency informed of the progress, as deemed appropriate.

Chairman Kennedy noted that this is a progress report in order to receive the Agency Board's concurrence with the direction in which the EDC has been moving forward with these projects. He noted that staff identified the work that is in process for each project and that the Agency Board is being asked to approve the actions to direct staff to move forward with the agreements that are ready to proceed, noting that the agreements would need to return to the Agency Board for approval.

Mr. Toy informed the Agency Board that the action before it is a request for conceptual direction to staff to negotiate an agreement given base parameters.

Executive Director Tewes noted a "not to exceed" amount is being recommended.

Agency Member Carr wanted to make sure that the Gunter Brothers project meets the goals of the Downtown Plan; making sure that the project conforms to all items addressed earlier this evening.

Chairman Kennedy opened the floor to public comment.

Ben Fuller, speaking for the Gunter Brothers project, indicated that he met with Downtown Association Board of Directors. He made it clear to them that this is a complex building site. Some of the ideas make a lot of sense and offers real opportunities for the future. He said that it will be a 2-4 year window period before they will be able to build. He understands the concepts and that he is looking forward to beginning the process. He indicated that phase I would be the initial development, phase II - housing development and Phase III is to return to the Council once the remediation process is complete.

Dan Craig indicated that the Downtown Association forwarded a letter to the Agency Board that states their concurrence with staff recommendations. He stated that it is felt that the Granada Theater is an important part to the turn around of the downtown. He felt that there is a golden opportunity with Mr. Wilkinson and the Granada Theater. He urged the Council to adopt staff's recommendation this evening.

Dan Ehrler informed the Council that the Chamber of Commerce Board of Directors unanimously voted its conceptual support of Mike Wilkinson's revitalization of the Granada Theater.

No further comments were offered.

Agency Member Sellers confirmed that this is a work in progress. He felt that earlier actions taken this evening were items that will help contribute to the downtown. He said that there is no other project more important than the revitalization of the Granada Theater as its closure has been significant. Once you lose a theater in the downtown, it is difficult to bring it back. He said that projects in the downtown require a variety of elements that have to come together and there has to be agreement on the part of all parties to make it happen. He said that Mr. Wilkerson has done a tremendous job in expressing his interest in the Granada Theater. He felt that it was important for the Gunter Brothers project to understand the Redevelopment Agency Board's goals. He stated his appreciation of Mr. Fuller's willingness to work toward these goals in order to get a more contiguous store front in this area. He felt that there can be more creativity with the Sunsweet project. He indicated that he has talked to the City Manager about some preliminary ideas and that he would like to explore them further in order to maximize the value of the last two projects identified.

**Action:**      *On a motion by Agency Member Sellers and seconded by Vice-chairman Tate, the Agency Board unanimously (5-0) **Directed Staff** to Negotiate Agreements with the Developer/Theater Operator and the Landlord for the Granada Theater in an Amount Not to Exceed \$1,060,000, Subject to Review and Approval of Agency Counsel.*

**Action:**      *On a motion by Agency Member Sellers and seconded by Vice-chairman Tate, the Agency Board unanimously (5-0) **Directed Staff** to Negotiate an Agreement with the Developers*

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*of the Gunter Brothers Project in an Amount Not to Exceed \$363,000, Subject to Review and Approval of Agency Counsel.*

**Action:** *On a motion by Agency Member Sellers and seconded by Vice-chairman Tate, the Agency Board unanimously (5-0) **Directed Staff** to Work with Glenrock to Revise its Proposal to more closely meet the Goals of the Downtown Plan.*

**Action:** *On a motion by Agency Member Sellers and seconded by Vice-chairman Tate, the Agency Board unanimously (5-0) **Directed Staff** to Work with the Developer/Operator of Booksmart/Thinker Toys to Encourage a Joint Venture with one of the Property Owners along the Third Street Block for the Relocation and Expansion of the Business.*

### **FUTURE COUNCIL-INITIATED AGENDA ITEMS**

\$30,000 CDGB funding request from the Dayworker Center Committee (for the 1/26/05 agenda) – Mayor Kennedy.

Streamline the agenda – Council Member Sellers

Discuss the possibility of starting the meeting ½ hour earlier – Mayor Pro Tempore Tate

### **ADJOURNMENT**

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 12:28 a.m.

**MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, CITY CLERK/AGENCY SECRETARY**